IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.MC.No. 1137 of 2006()

AGAINST THE ORDER DATED 15/12/2005 IN CRMP. 4551 /2004 IN STC.5191/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER: COMPLAINANT

T.M.SADIQUE, S/O.HASSAN, "ASMAS",
P.O.KURICHIYIL, THALASSERY-2, REP. BY POWER
OF ATTORNEY HOLDER ISUDHIN.A.V.,
S/O.MOIDU, A.V.HOUSE, P.O.KURICHIYIL,
TELLICHERRY.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.T.P.SAJID

RESPONDENTS: ACCUSED/STATE

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1. K.K.ABDUL SHAMSU,
S/O.ABOOTTY, SANAM PALACE, P.O.KURICHIYIL,
THALASSERY.

2. STATE OF KERALA, REP.
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.T.M.ABDUL LATHEEF
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1137 of 2006

Dated this the 19th day of July 2007

O R D E R

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. The matter has now reached the stage of defence evidence. The accused filed applications at the defence stage. The matter has had a chequered career. Suffice it to say that the learned Magistrate passed orders and allowed two requests made by the petitioner under Annexures 3 and 4.

2. In Annexure 3, there was a direction that the petitioner/accused shall file a consolidated additional witness list and on payment of necessary process fee, summons shall be issued to the additional witnesses. The short grievance of the petitioner with respect to that direction is that the petitioner/complainant is also shown as a witness in the defence witness list filed by the accused. The complainant does not want to examine himself. The complainant is prepared to take the risk arising out of such non-examination. The petitioner has no right to summon the complainant as a witness on his side. In these

circumstances, it may be clarified that under Annexure 3 order, the accused cannot choose to examine the petitioner/complainant as a witness on the side of the accused. That request can certainly be accepted.

3. By Annexure 4 order, the learned Magistrate has directed the complainant to appear before the court and furnish the required number of specimen handwriting and signature for comparison. The learned counsel for the petitioner submits that the complainant is employed abroad. He is unable to come to this court now. It is further contended that the accused has no right to insist on such appearance of the complainant. The complainant does not in these circumstances want to furnish the specimen signatures and handwriting of the complainant for comparison. In the light of that specific statement made by the learned counsel for the petitioner - that the complainant does not want to appear and furnish the required specimen handwriting and signatures, I am satisfied that the learned Magistrate can take note of that assertion by the complainant and proceed with the matter. Appropriate inference and conclusions can be drawn on the basis of the materials made available before the learned

Magistrate in the light of that specific assertion. I am satisfied that the submission of the learned counsel for the petitioner/complainant that the complainant does not want to furnish the specimen handwriting and signatures can be taken note of and Annexure 4 order vacated. Needless to say, the accused will be at liberty to take necessary steps to prove the documents by whatever other means that are available to him under law.

4. This Criminal Miscellaneous Case is, in these circumstances, allowed to the above extent.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007